

From: Abhay Padgaonkar
Date: February 8, 2023
Docket: 2022 APS Rate Case (**E-01345A-22-0144**) and 2022 TEP Rate Case (**E-01933A-22-0107**)
Re: **Ethics Complaint Against Commissioner Kevin Thompson**

February 8, 2023

Robin R. Mitchell
Chief Counsel/Legal Division Director
Arizona Corporation Commission
1300 W. Washington Street
Phoenix, AZ 85007-2996

Re: Ethics Complaint Against Commissioner Kevin Thompson

Dear Ms. Mitchell:

It is my understanding, based on Rule 8.1 of the Commission's Code of Ethics, that as the Chief Counsel you are also the Commission's Ethics Officer. As per Rule 8.1, I am submitting in writing a formal complaint alleging a violation of ethics rules related to Commissioner Kevin Thompson's New York meeting with the financial institutions as per his Facebook and Twitter posts.¹ As a gravely concerned ratepayer, I am asking you to: a) report the complaint to the Commissioners and the Executive Director, b) independently investigate this ethics complaint, and c) promptly make the findings of your investigation public.

It is indisputable that the financial institutions with whom Commissioner Thompson met represent an industry whose interests will be affected by Commission decisions. These financial institutions maintain a market in the securities of the regulated utilities or their parent companies, such as APS (Stock: PNW), TEP (Stock: FTS), and SW Gas (Stock: SWX), manage or co-manage a public offering of securities, and provide and receive compensation for investment banking services. These financial institutions list the regulated utilities as their clients, have beneficial ownership of the common stock, and disclose a significant financial interest in the stock of the regulated utilities or their parent companies.²

A higher ROE and allowance of SCRs, which these institutions desired in the 2019 APS rate case, would have resulted in more than half a billion dollars coming out of captive ratepayers' pockets over three years. These financial institutions vehemently criticized the Commission's decision to reject the rate increase by lowering APS's authorized ROE and by disallowing the SCRs.³ It is clear that these investors only have an interest in ensuring higher utility profits and stock prices on the backs of the ratepayers.

Commissioner Thompson's statements to "better the regulatory environment" and his vow that he is "no longer going to allow the regulatory environment in Arizona to be dead last in the nation" can mean only one thing: Higher authorized ROE and imprudent expenses included in the rates resulting in significantly higher rates for the ratepayers — while the utility profits and stock prices skyrocket, directly benefitting the financial institutions he met with and the utility investors and management whose bidding Commissioner Thompson is doing.

¹ "Kevin Thompson for Corp Comm" at: <https://www.facebook.com/ThompsonforCorpComm> and <https://twitter.com/VoteKThompson/status/1616873069901156354?cxt=HHwWhMDUplfpPAsAAAA>

² APS Response to Commissioner Kennedy at: <https://docket.images.azcc.gov/E000016073.pdf?i=1633709496418>

³ Guggenheim Investment Report at: <https://docket.images.azcc.gov/E000016064.pdf?i=1633709496418>

The financial institutions Commissioner Thompson met with: a) represent an industry whose interests will be affected by Commission decisions and b) whose intent is to influence any decision, legislation, policy, or rulemaking within the Commission's jurisdiction. **As per Rule 5.2, a Commissioner shall not knowingly communicate with any person, representing an industry or public service corporation whose interests will be affected by Commission decisions, and whose intent is to influence any decision, legislation, policy, or rulemaking within the Commission's jurisdiction, unless that person has registered as a lobbyist with the Commission prior to making or attempting to make such communication.**

It does not appear that any of the financial institutions or their representatives have registered as a lobbyist.⁴ Commissioner Thompson has not only knowingly communicated but has bragged about it on social media. **Therefore, Commissioner Thompson appears to be in clear violation of Rule 5.2 and his New York trip must be thoroughly investigated by the Commission.** This is especially important because there are two ongoing major rate cases (APS and TEP) — with *ex parte* invoked long before his trip — that are together seeking nearly \$600 million in annual rate increases from the ratepayers. In addition to the Commission's ethics investigation, per Rule 9.1, I will also ask you or the Commissioners to refer the matter to the Attorney General to investigate "knowing or corrupt misconduct."

If these rate increases are granted with Commissioner Thompson's affirmative vote under the guise of making the regulatory environment more "constructive" in Arizona, they will devastate hundreds of thousands of vulnerable citizens and communities in Arizona that are already reeling from the global pandemic and high inflation. Commissioner Thompson has struck a Faustian bargain to sell out — rather than protect — the very people that elected him.

On January 27th, I docketed my letter calling for an ethics investigation as a public comment, including a full page of troubling questions that Commissioner Thompson's New York trip raised.⁵ I hope your ethics investigation will also answer all those questions and whether any prohibited communications occurred requiring Commissioner Thompson's immediate recusal. It would also be helpful to know if you provided training to Commissioner Thompson to ensure his familiarity with the Commission's Code of Ethics, applicable Arizona laws related to the conduct of public officials, public record laws, and open meeting laws, as required by Rule 8.1.

PS: Although I am emailing this ethics complaint to you, for public transparency, I am simultaneously filing this letter into the ongoing APS (E-01345A-22-0144) and TEP (E-01933A-22-0107) rate case dockets.

Sincerely,

Abhay Padgaonkar

Consumer Advocate

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⁴ ACC Lobbyist Portal at: <https://efiling.azcc.gov/public-records/lobbyist/search>

⁵ "Commissioner Thompson's 'Wolves of Wall Street' Junket Screams for an Ethics Investigation" at: <https://docket.images.azcc.gov/E000023860.pdf>